

## Message Text

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ACTION L-03

INFO OCT-01 NEA-10 ISO-00 JUSE-00 COME-00 EB-07 CIAE-00

DODE-00 PM-04 H-02 INR-07 NSAE-00 NSC-05 PA-01 PRS-01

SP-02 SS-15 USIA-06 TRSE-00 /064 W

----- 103135

P R 301206Z APR 76

FM AMEMBASSY NEW DELHI

TO SECSTATE WASHDC PRIORITY 5642

INFO AMCONSUL BOMBAY

AMCONSUL CALCUTTA

AMCONSUL MADRAS

LIMITED OFFICIAL USE SECTION 1 OF 2 NEW DELHI 6348

FOR L/PM ACTION

EO 11652: NA

TAGS: PGOV, PFOR, IN

YIBJ: CABINET TASK FORCE ON QUESTIONABLE PAYMENTS ABROAD:

FOREIGN LAWS ON QUESTIONABLE PAYMENTS

REF: (A) STATE 094647 (B) NEW DELHI A-96

1. IN RESPONDING TO REFTEL, WE MAKE REFERENCE TO THE FOLLOWING SIX INDIAN STATUTES: THE INDIAN PENAL CODE, 1860 (IPC); THE PREVENTION OF CORRUPTION ACT, 1947 (POCA); THE INDUSTRIES (DEVELOPMENT AND REGULATION) ACT, 1951; THE COMPANIES ACT, 1956; THE FOREIGN EXCHANGE REGULATION ACT, 1973 (FERA); AND THE FOREIGN CONTRIBUTION (REGULATION) ACT OF 1976.

2. THE FOLLOWING ANSWERS ARE PROVIDED IN REPLY TO THE QUESTIONS AS LISTED IN PARA 2 OF REFTEL:

A. YES. INDIA HAS BOTH GENERAL AS WELL AS SPECIFIC PENAL LEGISLATION PUNISHING THE OFFER, SOLICITATION, GIVING OR RECEIPT OF MONIES OR OTHER THINGS OF LIMITED OFFICIAL USE

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VALUE TO INFLUENCE OFFICIAL ACTIONS. IPC

IS THE GENERAL STATUTE THAT MAKES IT AN OFFENSE TO ACCEPT, OR OBTAIN, ANY GRATIFICATION OTHER THAN LEGAL REMUNERATION, AS A MOTIVE OR REWARD FOR DOING OR FORBEARING TO DO AN OFFICIAL ACT OR SHOWING ANY FAVOR TO ANY PERSON. PENAL ACTION UNDER IPC CAN INVOLVE A FINE OR IMPRISONMENT, OR BOTH. THE OFFER, SOLICITATION, GIVING OR ACCEPTANCE OF MONIES OR OTHER THINGS OF VALUE TO INFLUENCE OFFICIAL ACTIONS IS ALSO SUBJECT TO PENAL ACTION UNDER POCA THE MORE SPECIFIC LAW.

B. YES. FOREIGN CONTRIBUTION (REGULATION) ACT OF 1976 SEEKS TO REGULATE THE ACCEPTANCE OF FOREIGN CONTRIBUTIONS IN THREE WAYS. IT IMPOSES AN ABSOLUTE BAN ON THE ACCEPTANCE OF PAYMENTS OF ANY SORT FROM A FOREIGN SOURCE BY ANY GOVERNMENT OFFICIAL (SECTION 4(1)). IN ADDITION, NO PERSON, RESIDENT IN INDIA AND NO CITIZEN OF INDIA RESIDENT OUTSIDE INDIA, SHALL ACCEPT ANY FOREIGN CONTRIBUTION OR ACQUIRE ANY FOREIGN CURRENCY ON BEHALF OF ANY POLITICAL PARTY OR ANY GOVERNMENT OFFICIAL (SECTION 4(2)). IN THE SECOND CATEGORY, PRIOR PERMISSION OF THE GOVERNMENT OF INDIA (GOI) HAS TO BE OBTAINED BEFORE ACCEPTANCE OF A FOREIGN CONTRIBUTION. ORGANIZATIONS OF A POLITICAL NATURE, SHALL NOT ACCEPT ANY FOREIGN CONTRIBUTION EXCEPT WITH THE PRIOR PERMISSION OF THE GOI (SECTION 5). IN THE THIRD CATEGORY, A MERE REPORTING TO THE GOVERNMENT IS REQUIRED. ORGANIZATIONS IN INDIA HAVING DEPENDENT CULTURAL, ECONOMIC, EDUCATIONAL, RELIGIOUS OR SOCIAL PROGRAMS, AND EVERY CITIZEN OF INDIA RECEIVING SCHOLARSHIPS, STIPENDS OR ANY PAYMENTS OF A LIKE NATURE FROM ANY FOREIGN SOURCE ARE REQUIRED TO NOTIFY THE GOI, WITHIN THE STIPULATED TIME-PERIOD, OF THE RECEIPT OF SUCH PAYMENTS (SECTIONS 6 AND 7). THE COMPLETE BAN TO FOREIGN CONTRIBUTIONS DOES NOT APPLY WHERE THE TRANSACTION IS THE RECEIPT OF WAGES OR REMUNERATION IN THE ORDINARY COURSE OF BUSINESS; THE RECEIPT OF GIFTS FROM RELATIVES SUBJECT TO CERTAIN MONETARY LIMITED OFFICIAL USE

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LIMIT; THE RECEIPT OF PAYMENTS IN THE COURSE OF INTERNATIONAL TRADE OR COMMERCE; AND THE RECEIPT OF REMITTANCES IN THE ORDINARY COURSE OF BUSINESS THROUGH AUTHORIZED BUSINESS AND BANKING CHANNELS (SECTION 8).

C. NO. INDIA DOES NOT HAVE LAWS OR REGULATIONS GOVERNING THE INVOLVEMENT OF AGENTS (EITHER INDIANS OR OTHERS) IN SALES OR INVESTMENT TRANSACTIONS WITH GOI

AGENCIES OR CORPORATIONS. HOWEVER, FERA IMPOSES CERTAIN RESTRICTIONS ON APPOINTMENT OF CERTAIN PERSONS AND COMPANIES AS AGENTS IN INDIA (SECTION 28). THIS SECTION PROVIDES, INTER ALIA, THAT PERMISSION OF THE RESERVE BANK OF INDIA BE OBTAINED BEFORE CERTAIN CATEGORIES OF PERSONS ACT OR ACCEPT APPOINTMENTS TO ACT AS AGENTS IN INDIA OF ANY PERSON OR COMPANY. THE CATEGORIES COVERED BY THIS ACT ARE: PERSON RESIDENT OUTSIDE INDIA (WHETHER OR NOT AN INDIAN), OR PERSON WHO IS NOT AN INDIAN BUT IS RESIDENT IN INDIA OR COMPANY WHICH IS NOT INCORPORATED IN INDIA OR IN WHICH NON-RESIDENT INTEREST IS MORE THAN FORTY PERCENT, OR ANY BRANCH OF SUCH COMPANY.

D. YES. CONTRIBUTIONS TO A POLITICAL PARTY OR FOR POLITICAL PURPOSES BY ANY PUBLIC OR PRIVATE INDIAN CORPORATION ARE TOTALLY FORBIDDEN (SECTION 293-A OF THE COMPANIES ACT OF 1956). POLITICAL CONTRIBUTIONS BY INDIVIDUALS MAY BE MADE BUT SUCH CONTRIBUTIONS ARE NOT DEDUCTIBLE AS AN EXPENSE IN COMPUTING INCOME TAX AND HER PERSONAL TAX LIABILITIES.

E. AS NOTED UNDER D ABOVE, COMPANIES ARE TOTALLY PROHIBITED FROM MAKING ANY POLITICAL CONTRIBUTIONS.

IF A COMPANY VIOLATES THIS PROVISION, IT IS PUNISHABLE WITH A FINE OF RS5,000 (APPROX. US\$600) AND EVERY OFFICER OF THE COMPANY IN DEFAULT SHALL BE PUNISHABLE WITH FINE AND IMPRISON-

MENT WHICH MAY EXTEND UP TO THREE YEARS. THUS, THE LAW GOES FAR BEYOND REQUIRING MERE DISCLOSURE OF POLITICAL CONTRIBUTION BY A COMPANY. AS REGARDS INDIVIDUALS, DISTINCTION HAS TO BE LIMITED OFFICIAL USE

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MADE BETWEEN GOVERNMENT OFFICIALS AND ORDINARY CITIZENS( POLITICAL CONTRIBUTIONS BY GOVERNMENT OFFICIALS MAY BE REGULATED BY THEIR RULES OF

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P R 301206Z APR 76

FM AMEMBASSY NEW DELHI

TO SECSTATE WASHDC PRIORITY 5643

INFO AMCONSUL BOMBAY

AMCONSUL CALCUTTA

AMCONSUL MADRAS

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FOR L/PM ACTION

EMPLOYMENT AND CONDUCT REGULATIONS. THERE APPEARS TO BE NO SPECIAL LAW OR REGULATION IN THE MATTER OF POLITICAL CONTRIBUTIONS BY PRIVATE INDIVIDUALS.

F. YES. THE COMPANIES ACT, 1956 AND THE INDUSTRIES (DEVELOPMENT AND REGULATION) ACT OF 1951 ARE RELEVANT INDIAN STATUTES. THE COMPANIES ACT (SECTION 338-B) ENABLES THE GOI TO INITIATE PROCEEDINGS IN COURT FOR THE REMOVAL OF DIRECTORS AND OTHER MANAGERIAL PERSONNEL OF COMMERCIAL ENTITIES IF IT IS FOUND THAT THE MANAGEMENT AND CONDUCT OF THE AFFAIRS OF A COMPANY HAVE BEEN CARRIED OUT IN A MANNER PREJUDICIAL TO PUBLIC INTEREST OR WHERE THE OFFICIALS CONCERNED ARE GUILTY OF FRAUD, MISFEASANCE, PERSISTENT NEGLIGENCE OR BREACH OF TRUST. THE INDUSTRIES (DEVELOPMENT AND REGULATION) ACT PERMITS GOI TO CAUSE INVESTIGATION TO BE CONDUCTED IN THE PERFORMANCE OF INDUSTRIAL UNDERTAKINGS AND INVESTS GOVERNMENT WITH POWERS TO ASSUME LIMITED OFFICIAL USE

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MANAGEMENT OR CONTROL OF SUCH UNDERTAKINGS (SECTION 15-18AA). BOTH LEGISLATIONS ARE SUFFICIENTLY BROAD TO ENABLE GOVERNMENT TO FRAME CHARGES IN CASE IN WHICH SOLICITATION, PAYMENT OR RECEIPT OF KICKBACKS OR OTHER UNDISCLOSED PAYMENTS OR COMMISSIONS TO INFLUENCE CORPORATE DECISION

MAKING ARE FOUND TO BE IMPROPER.

3. GENERAL COMMENTS: IPC IS THE BASIC PENAL LEGISLATION DEALING WITH ALL KINDS OF CRIMES. IPC REQUIRES PROOF THAT GRATIFICATION WAS ACCEPTED AS "MOTIVE OR REWARD" FOR A PARTICULAR ACTION OR FORBEARANCE TO ACT ON THE PART OF A PUBLIC SERVANT. AS MOTIVE IS ALWAYS DIFFICULT TO ESTABLISH IN CRIMINAL CASE, IT BECAME NECESSARY TO RENDER EXISTING CRIMINAL LAW MORE EFFECTIVE IN DEALING WITH CASES OF BRIBERY AND CORRUPTION WHICH HAD INCREASED ENORMOUSLY BY POST WORLD WAR II CONDITIONS. HENCE, ENACTMENT OF POCA IN 1947. THE FIRST MAJOR ACCOMPLISHMENT OF POCA WAS TO ANSWER "PROOF OF MOTIVE" REQUIREMENT BY BRINGING IN A STATUTORY PRESUMPTION UNDER SECTION 4 TO THE EFFECT THAT IF A PERSON HAS ACCEPTED OR AGREED TO ACCEPT GRATIFICATION, IT SHALL BE PRESUMED THAT HE ACCEPTED IT AS MOTIVE OR REWARD OR WITHOUT CONSIDERATION AS THE CASE MAY BE. THE HEART OF POCA IS SECTION 5(1) WHICH INTER ALIA, PROVIDES THAT AN OFFICIAL IS SAID TO COMMIT THE OFFENCE OF CRIMINAL MISCONDUCT: IF: (A) HE BY CORRUPT OR ILLEGAL MEANS OR BY OTHERWISE ABUSING HIS POSITION AS A PUBLIC SERVANT, OBTAINS FOR HIMSELF OR FOR ANY OTHER PERSON ANY VALUABLE THING OR PECUNIARY ADVANTAGE; OR (B) HE OR ANY PERSON ON HIS BEHALF HAS BEEN IN POSSESSION, FOR WHICH THE OFFICIAL CANNOT SATISFACTORILY ACCOUNT, IF PECUNIARY RESOURCES OR PROPERTY DIS-PROPORTIONATE TO HIS KNOWN SOURCES OF INCOME. THE PENAL PROVISIONS UNDER POCA ARE MORE SEVERE THAN UNDER IPC. BROADLY STATED, POCA IS DIRECTED AGAINST THE ACCEPTANCE OF GIFTS, BRIBERY, EMBEZZLEMENT, AND NEPOTISM. THE COMPANIES ACT OF 1956 IS WIDELY REGARDED AS PERHAPS THE MOST COMPREHENSIVE LEGISLATION ANYWHERE COVERING THE OPERATION, CONTROL, AND ADMINISTRATION OF CORPORATE BODIES. THE INDUSTRIES (DEVELOPMENT AND REGULATION) ACT OF 1951 WAS ENACTED PRIMARILY TO REGULATE THE FLOW OF NATIONAL RESOURCES INTO PLANNED ECONOMIC AND INDUSTRIAL DEVELOPMENT AND TO GIVE GOI AUTHORITY TO INVESTIGATE LIMITED OFFICIAL USE

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AND TAKEOVER THE AFFAIRS OF COMPANIES THAT WERE MISMANAGED OR THAT DID NOT PERFORM IN FURTHERANCE OF PUBLIC INTEREST. THE FOREIGN CONTRIBUTION (REFULATION) ACT OF 1976 HAS WIDE RANGING IMPLICATIONS ESPECIALLY IN REGULATING AND CONTROLLING CONTRIBUTIONS OF MONEY AND GOODS, FOREIGN HOSPITALITY AND BY FOREIGN PERSONS AND ORGANIZATIONS.

4. FOR ATTENTION OF L/PM THE EMBASSY HAS AIRPOUCHED FULL TEXTS OF ALL LEGISLATIONS CITED IN FOREGOING. SAXBE

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## Message Attributes

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